DOCKET FILE COPY ORIGINAL

EX PARTE OR LATE FILED

RECEIVED

MAY 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

altv
ASSOCIATION OF LOCAL TELEVISION STATIONS

RECEIVED
MAY 15 '98
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

May 15, 1998

Ms. Magalie Roman-Salas
Office of Secretary
Federal Communication Commission
1919 M Street, N.W.
Washington D.C. 20554

RE: Oral and Written Ex parte Notification
MM Docket No: 91-221

Dear Ms. Roman-Salas:

On May 14, 1998 David L. Donovan (ALTV) and Greg Schmidt (LIN Television) met with The Honorable William Kennard, Mr. Roy Stewart, Ms. Rene Licht and Ms. Susan Fox to discuss issues pertaining to the above referenced proceeding. Also, the attached *Supplemental Report* was distributed.

Sincerely,

David L. Donovan

No. of Copies rec'd 0+1
List A B C D E

1320 19th Street, NW, Suite 300 • Washington, DC 20036 • tel 202.887.1970 • fax 202.887.0950

RECEIVED

MAY 15 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Local Marketing Agreements and the Public Interest: A Supplemental Report

MM Docket No. 91-221

altv

Prepared by the

Association of Local Television Stations, Inc.
&
Local Station Ownership Coalition

May, 1998

In addition to the duopoly rule, I am also pleased to see that this conference report grandfathers local marketing agreements, or LMA's. Many local broadcasters have stayed competitive by entering into these LMA's with one another. These innovative joint ventures allow separately owned stations to function cooperatively, achieving economies of scale through combined sales and advertising efforts, and shared technical facilities. These local marketing agreements have served their communities in a number of ways: some have increased coverage of local news; others have increase coverage of local sports, particularly college sports; and, many LMA's have provided outlets for innovative local programming and children's programming.

The Honorable .Wendell H. Ford
United States Senate
February 1996

The 1996 Act clearly reflects a Congressional determination that existing local marketing agreements ("LMAs") are in the public interest. Congress based its determination on evidence that these combinations, through the investment of hundreds of millions of dollars, have promoted both competition and diversity in many local markets. LMAs have been responsible for putting many new stations on the air, for transforming failing stations into viable competitors, and for giving under performing station the capability to reach many more households. The public benefits resulting from LMAs include vastly improved local news, sports, children's and public affairs programming.

Based on this evidence, Congress explicitly accorded special treatment to LMA's in Section 202(g) of the 1996 Act... In the legislative history of Section 202(g), the Conference Committee noted the benefits of these agreements and expressed its clear intent to grandfather existing LMAs.

The Honorable John Dingell
U.S. House of Representatives
June 3, 1997

Local Marketing Agreements nd The Public Interest: A Supplemental Report

Table of Contents

Local Marketing Agreements and the Public Interest: A Supplemental Report

I. Introduction

The following *Supplemental Report* updates an analysis filed previously with the FCC by the Association of Local Television Stations (ALTV) and the Local Station Operators Coalition (LSOC).[1] In our initial report, ALTV surveyed approximately 60 known local marketing agreement combinations (LMAs). In March of 1997, we provided the Commission with a case study analyzing the performance of 33 local marketing agreements.

On June 17, 1997, the FCC issued a *Public Notice* requesting information from licensees involved with local marketing agreements. The Commission asked a variety of questions regarding each LMA, such as the time and duration of the agreements, affiliation, signal overlap, renewal provisions, etc. In addition, the *Public Notice* asked stations to summarize the public interest benefits of the station.

A. Executive Summary of Results

This analysis is based on the responses to the FCC's *Public Notice*. Unfortunately, the FCC's public interest question was not as specific as ALTV's earlier survey. The responses provided by stations, however, confirm our previous analysis. Existing local marketing agreements have clearly benefitted the public interest by providing higher quality free over-the-air television services in their respective markets.

- LMAs exist in large, medium and small television markets. LMAs have been extremely important in increasing the number of competitive voices in local markets, especially in medium and small markets.

---

[1]*See Local Marketing Agreements and the Public Interest*, filed in Reply Comments of the Association of Local Television Stations, in MM Docket No. 91-221 (March 1997).

- LMAs provide the necessary financial resources to commence new television operations and to rescue financially distressed stations. Absent this financial investment, service would decline in many markets.

- LMAs generally do not involve duplicate programming. Duplication exists only in cases where stations were extending coverage areas into unserved areas of a market.

- LMAs created viable outlets for the emerging networks UPN, PaxNet and WB, thereby increasing network competition locally and across the country

- LMAs lead to improved service by increasing the amount of news, public affairs and sports broadcasts that are available on free, over-the-air television.

- LMAs have directly resulted in improved facilities which benefit the public by improving service.

- LMAs have helped increase minority television ownership.

- Overall, the efficiencies associated with LMAs improve service and create more jobs in the television industry.

By any measure, these arrangements have improved service to American consumers. They have increased the quality and diversity of programming that is available, especially in small television markets. They have provided additional competition to the major national networks by providing important outlets for the new emerging networks. By making stations more competitive, the number of advertising outlets available for local regional and national advertisers has increased. They have also provided new opportunities for minority ownership. In sum, local marketing agreements have served the public interest.

The responses to the FCC's *Public Notice* provide important evidence for the FCC's multiple ownership proceeding. First, they confirm the Congress's observation made in the 1996 Telecommunications Act statement that existing LMAs serve the public interest. There should be no doubt that permanently grandfathering these arrangements will yield significant benefits to the public. Equally important is the fact that these combinations serve as a "laboratory" test, providing the FCC with valuable insight as to how the industry would perform in the absence of the local television duopoly rule. In this regard, there is no question that over-the-air television service would improve.

B. Diversity and Local Marketing Agreements

This *Supplemental Report* comes at a critical juncture in the Commission's deliberations about its local television ownership rules. The solid performance of the existing local marketing agreements should be viewed in the context of the goals that underpin the FCC's television duopoly rule. In fact, the FCC's concern over local marketing agreements is premised on the notion that LMAs somehow undermine of these rules.

The FCC's duopoly rule presumes that an industry comprised of separate local owners promotes diversity by creating independent "antagonistic" owners in local markets. It assumes that an independent, "antagonistic" ownership structure will ultimately create a diverse marketplace of ideas with respect to programming and editorial opinion broadcast over the air waves. It is worth remembering however, that the nexus between separate ownership in local markets and an increase in programming and viewpoint diversity is a *presumption,* not a hard fact.[2] In recent months, both the courts and some Commissioners have begun to question this presumptive nexus.

The LMA case studies presented herein call into question one key element of this presumption — the nexus between diverse programming and independent "antagonistic" ownership. In today's marketplace, federal regulations forcing an antagonistic, independently owned television broadcast structure in local markets do not foster diversity of opinion and programming in broadcasting.

To be fair, in the context of television broadcasting, a "one station per owner" local rule may have made sense in the 1960's. Given the limited number of media outlets existing at the time, such a rule did not appear to negatively impact the provision of news, public affairs and entertainment programming. Competitive incentives at that time did not conflict with the FCC's duopoly rule.

This is no longer the case. Local free, over-the-air television faces significant competition from a variety of multi-channel sources, including cable and DBS. In 1991 the FCC's Office of Plans and Policy observed consequences of this new competition:

> In the next ten years, broadcasters will face intensified competition as alternative media, financed not only by advertising but also by subscription revenues, and offering multiple channels of programming expand their reach and their audience. Television broadcasting will be a smaller and far less profitable business in the year 2000 than it is now. Although broadcasting will remain an important component in the video mix, small market stations, weak independents in larger markets, and UHF independents in general will find it particularly difficult to compete, and some are likely to go dark. The analysis supports the conclusion that in the new reality of increased competition regulations imposed in a far less competitive environment to curb perceived market power or concentration of

---

[2]The FCC has never justified its ownership policies simply on the need to have a variety of different owners *per se.* The television ownership rules have always been based on the nexus between different owners and programming.

control over programming are no longer justified and may impede the provision of broadcast services.[3]

Today, the duopoly rule has created a local market industrial structure that in many markets is not producing at an optimally efficient level. To the contrary, in its search for diverse ownership under the television duopoly rule, the FCC has forced an ownership structure on the television broadcast industry that is inconsistent with today's economic reality. There is a disconnection between the economics of free, over- the- air broadcasting and FCC rules that perpetuate a "one station per owner" marketplace.

This "economic disconnect" undermines the very "diversity" goal the FCC seeks to advance through the television duopoly rule. To be sure, with rare exceptions, there is no common ownership of television stations in local markets. As the case studies presented *infra* demonstrate however, stations that are now part of local marketing arrangements were in economic peril prior to entering into the local marketing agreement. Some channels remained unbuilt for years. Other facilities were, at best, marginal operations. While "antagonistic" and independently owned, these voices were muted or silent, constrained by the economic reality. Their inability to contribute as truly viable speakers in the local market calls into question the purported nexus between independent ownership and diversity of opinion as expressed through programming.

The issue confronting the FCC is best illustrated by the following example. Assume a local market with seven television stations. Is it better to require seven separate owners even though one or two of the stations may not be competitive in a local market? Pursuing such a policy may look good on paper, but in reality, two voices have been effectively silenced -- reduced to a whisper by economic reality. In this situation would it be better to have fewer than seven owners if it meant revitalizing the two non-competitive stations? From a diversity perspective doesn't it make more sense to have strong viable stations than to force a system of ownership that effectively limits the strength of two stations.[4]

The FCC should also examine the issue from the consumers point of view. In recent years the government has become concerned about creating "information haves" and "have nots." The presence of free, over-the-air television directly addresses this issue by providing service to

---

[3]Setzer, Florence and Jonathan Levy, Federal Communications Commission Office of Plans and Policy, OPP Working Paper No. 26, *Broadcast Television in a Multichannel Marketplace*, June 1991 at vii.

[4]This is not to say that seven (or for that matter five) independent owners is the optimum number. In a perfect world, the optimum number of independent voices should be determined by the market forces in each local television market. At the very least, however, broadcasters should have the opportunity to follow the dictates of the marketplace and own more than one over-the-air channel in a local market.

all Americans, rich and poor urban and rural. Consumer access to free, over-the-air television broadcasting is a critically important issue, especially in an era of increasing cable rates.

Referring to the example presented above, is a consumer better off with a system of seven independently owned stations, if two of the stations are weak economically and provide little or no service? To the contrary, consumers are better off with seven, viable, free, over-the-air television choices, even though there are less than seven owners. Indeed, if the FCC is truly concerned about keeping a free, universal video service, then it would give top priority to promoting ownership policies that create economically viable units.

Permitting local stations to harness local economies of scale to present additional news casts, public affairs programs, sporting events and top quality entertainment programs -- for free -- should be the most important public interest objective. At the core of the FCC's ownership policies is the goal that diverse ownership will lead to the broadcasting of diverse programming and opinions. It is the programming that conveys the thoughts and opinions so necessary to enhance the marketplace of ideas. But the marketplace of ideas is not enhanced, if in the name of a diverse ownership structure, a station lacks the economic vitality to present local news, public affairs and other programs. Continuing to impose an economically unsound industrial structure in local markets in the name of "ownership diversity" is simply counterproductive. In the long run, even the number of diverse owners will decline as firms leave the market and stations go off the air.

In summary, local marketing agreements have fostered the FCC's goal of promoting diversity in local markets. Absent these arrangements, many of these free, over-the-air video choices would simply not exist. The public interest and diversity enhancing contributions of these local marketing agreements should be considered by the FCC. The Commission can no longer rely on its traditional one owner per station presumption in light of proven programming performance and economic reality.

The *Supplemental Report* that follows is divided into two sections. The first section summarizes the overall public interest benefits resulting from existing local marketing agreements. The second section of the report is a compilation of the public interest statements filed by the local marketing agreement licensees in response to the FCC's *Public Notice*.

II. Performance of Local Marketing Agreements: A Summary

One of the key questions answered by the responses to the FCC's *Public Notice* is how many local LMAs exist today. Looking strictly at arrangements between stations located in either the same DMA or those having overlapping Grade B signals, we have isolated approximately 78 local LMA combinations. Nonetheless, this may be a slight overestimation of the actual number of operational LMAs that could be subject to a change in the FCC's rules. This number includes LMAs that would not necessarily be affected by a change in the FCC's rules. For example some of the responses involved LMAs with low powered stations, which do not trigger the FCC's duopoly rule. Other situations involve full powered stations located in the same DMA, but with no Grade B overlap.

For the purposes of the performance analysis presented below, we have focused on 68 operational LMAs. Because the primary focus of our investigation is to examine the public interest performance of local combinations, we have excluded so called "out of market" management arrangements. We have included time brokerage arrangements between stations that are either located within the same DMA and/or have overlapping Grade B contours. Also, since we are examining the actual performance of these combinations, we have excluded those LMA arrangements where one of the stations is either not yet on the air or where the programming agreement is not in effect.[5] We have not included local marketing agreements that are used primarily as transfer mechanisms. Our objective is to examine local marketing agreements that operate on a daily basis. These arrangements will provide the best insight as to how local market combinations will perform if the rules are changed.

Finally, we recognize there have been some marketplace changes since the responses were filed to the *Public Notice* last summer. Rather than attempting to track potentially numerous ownership changes that may have occurred to some stations, we have used the responses as a snapshot of the public interest benefits that can be achieved through LMA combinations. We believe this is a valid method of assessing the performance of the local combination. In this regard, the issue is not necessarily who owns the station *per se*. The issue is not whether corporation *X, Y or Z* has entered into a local marketing agreement. The Commission's rules apply to all entities. The key issue is whether local combinations such as LMAs create economic incentives that will improve overall service to the community. Using the responses to the FCC's *Public Notice* provides an ample snapshot of this process at work.

A. Market Size

In our earlier *Report* we observed that local marketing agreements could be found in all market sizes. Nonetheless, a significant number of LMAs were found in small to medium markets. Responses to the FCC's *Public Notice* confirm this analysis. Because we are simply examining where local marketing agreements exist, we are not focusing only on those that are operational. It is still relevant to determine where these arrangements exist, even though some of

---

[5]For example, the LMAs involving KMSS and KSHV (Shreveport, LA) and KWKT and KAKW (Waco TX) are described as "back up" LMAs and do not appear to be operational. Similarly, we have isolated five local marketing agreements where, according to the response, at least one of the stations is not yet on the air.

the facilities were not operational at the time responses were filed with the FCC. Accordingly, the following analysis is based on the entire universe of 78 LMAs.

As the chart below demonstrates, approximately 83% of the responding local marketing agreements were found outside the top 25 markets. In fact, half (51%) of the LMAs can be found in markets 25 to 75. Indeed, nearly a quarter of the LMAs (21%) are located in the smallest 100+ markets.

As the data presented below demonstrate, local marketing agreements or local combinations are critical to the growth of the video and television marketplace in small and medium markets. In these markets, individual stations simply cannot survive economically. Absent the LMA agreement, there would be one less free over-the-air voice in the marketplace. As we will discuss, *infra*, this can have a significant impact on local competition and the development of new, competitive over-the-air television networks.

LMAs By Market Size

Market Size	Number of LMAs	Percentage of All LMAs
1- 25	13	17%
26-50	23	29%
51-75	17	22%
76-100	8	10%
101 - 125	8	10%
125 - 150	3	4%
151 - 175	2	2%
176-200+	4	5%
Total	**78**	

In many small and medium-sized markets, the efficiencies associated with local marketing agreements are the direct cause for an additional over-the-air voice to the market. These arrangements have also been responsible for strengthening financially distressed facilities and permitting stations to extend coverage to unserved areas of the market. The same appears to be the case in the larger markets as well. Stations which heretofore were not operational or provided a minimum of service to the public improved dramatically when part of a local marketing agreement.

B. Financial Considerations

Our previous survey demonstrated that 77.1% of the responses indicated that the brokered station was either bankrupt or failing financially prior to entering into the local marketing agreement. After the local marketing agreement's inception, only 4% of the survey respondents remained in this financial distress.

Unfortunately, the Commission did not ask for specific information regarding the financial condition of the station being brokered. Nonetheless, 40 of the 68 operational LMAs (59%) indicated that the brokered station was in some form of financial hardship.[6] Absent a specific instruction, it is entirely possible that brokered LMA stations with financial problems would have addressed this issue.[7]

Those that did respond to a prior financial condition were fairly specific. For example, KDFI (Dallas, TX), WABM (Birmingham, AL), and WACY (Green Bay/Appleton, WI) were in bankruptcy. Others such as WUXP (Nashville, TN) were in default of their loans and could not keep current with their operating expenses. WTEV (Jacksonville, FL) had "failed." WLMT (Memphis, TN) was losing money. WUPN (Greensboro, NC) was suffering from "financial" problems. KTFO (Tulsa, OK) was losing a million a year and off the air. WJTC (Mobile, AL, and Pensacola, FL) was also off the air. KTTU (Tucson, AZ) was in "serious financial trouble." KFXB had a history of failure prior to entering into its LMA. WLOV (Columbus, MS) was losing money and would have gone dark. KION (Monterey/Salinas, CA) was in financial trouble and near bankruptcy. In Victoria, Texas, (DMA market No. 206), the station was near foreclosure. WBNE (Hartford, CT) remained unbuilt for over 40 years. The construction permit for KWAJ (Wichita, KS) would still be "frozen" but for the local marketing agreement. KHMT (Billings, MT) was dark for two years. WGBC (Meredian, MS) was off the air.

Obviously, stations that are in financial distress are unable to provide top quality service to their markets. This is true even if a station is not in bankruptcy *per se*. For example, KXTX (Dallas, TX) was stuck in a vicious spiral of increased programming costs and declining revenues. The result was that it cut back on its news programming, a situation that was remedied by entering into the local marketing agreement with KXAS. The same situation existed for

---

[6]This figure does not include "new" stations that lack a financial history. It may be assumed, however, that financial considerations were the primary factor for these stations not being on the air in the first place. Absent the LMA, these stations would not be operational or in the process of being constructed.

[7]For example, KREM/KSKN (Spokane) did not specifically mention an extreme financial hardship in its response. The stations did note that KSKN was affiliated with the home shopping network. Given its status in the market, it is reasonable to assume that it lacked the finances to begin general operations or commence news operations.

WAUB and WOIO, (Cleveland, OH) where new programming increased after the stations entered into an LMA.

In sum, the responses to the FCC's *Public Notice* corroborate ALTV's previous conclusion. Local marketing agreements have increased the number of free, over-the-air voices in local television markets by harnessing local market efficiencies. This pro-diversity result can be seen in large, medium, and small television markets.

C. Development of Emerging Networks

Again the responses to the FCC's *Public Notice* confirm our previous conclusion that local marketing agreements are critical to the development of free, over-the-air networks in local television markets. Absent these LMAs, new and emerging networks would lose access to over-the-air outlets in a number of markets.

For years, the FCC worked to create an industrial structure that would promote additional off-air television networks. Despite several attempts, it was not until the late 1980s, that a fourth over-the-air network emerged. The Fox network was able to roll-out because there was a ready supply of financially viable affiliates, especially UHF affiliates. It took years, however, for these stations to gain an economic foothold in the marketplace even though competition from cable was in its infancy and competition from other multi-channel sources nonexistent. Today, the competitive environment is much tougher. The key lesson learned from this experience is that a solid local station affiliate base is critical to the development of a new network. National networks, by themselves, do not provide a sufficient incentive to stimulate new station construction or the resurrection of financially troubled facilities. The reverse is true-- new networks need financially stable affiliates in order to grow and become competitive.

Further evidence for this can be found in many medium and small markets today. The existence of four strong national networks and two new emerging networks has not guaranteed that additional off-air television stations would be built in these markets. The number of "shared" affiliations demonstrates that a network service, by itself, does not necessarily provide the economic base to build and operate an additional television voice in the market. If it did, then we would not see shared affiliations in small markets. Moreover, the new networks, such as WB and PaxNet, have found it necessary to rely on cable carriage in order to extend the network's reach in smaller markets.

To the contrary, in today's economic climate the harnessing of local efficiencies through local marketing agreements appears to be a necessary component in creating additional financially stable voices in the marketplace. This in turn has a direct benefit on the new, emerging, off-air television networks by providing them with viable outlets in local markets.

In short, if there is no viable station available, the new emerging networks will either 1) rely on cable, a pay medium, rather than build a local station from the ground up, 2) import a network signal or feed from a distant source via satellite, or 3) seek a dual affiliation to reach audiences. In the first two instances, consumers are forced to subscribe to cable or DBS in order to access programming on new networks. While dual affiliations keep both network feeds on free television, consumers in these markets are unable to access the full network schedules, in real time. The most pro-consumer result would be the creation of new, over-the-air television stations in smaller markets. This would make new networks available without resorting to pay services, and would also permit consumers to see all of the networks' programming.

The chart below demonstrates the importance of local marketing agreements to the rollout of new, competitive, off-air television networks. Approximately 55% of the *brokered* LMA stations are affiliated with the new UPN or WB networks.[8]

Brokered Stations By Network Affiliation		
Network	**Percent of LMAs**	**No. Of Stations**
UPN	37	29
WB	18	14
FOX	10	13
Independent	10	13
ABC	9	7
CBS	1	1
NBC	1	1
Other (Spanish/CP)	4.6	3

To further illustrate the point, UPN has approximately 150 affiliates[9]. The 29 LMA related affiliates account for 19.3% of all UPN affiliates. The same is true for WB, where the 14 brokered LMA related affiliates account for 16% of all WB affiliates. These figures may actually underestimate the importance of local marketing agreements to new networks because in some instances the brokering station is affiliated with either the UPN or WB network. No doubt these brokering stations are not the strongest in the market and the efficiencies from the local

[8]Note the total number of brokered LMA affiliates will be greater than 78 due to some dual affiliations in small markets.

[9]*1997 Television & Cable Factbook* at G58

marketing agreement helped both stations. Thus, the efficiencies from the local marketing agreement may be even more important to the emerging networks' ability to access local markets.

The tough policy question for the FCC is whether these stations can survive if their LMAs are terminated. History has demonstrated that the stations involved in these LMAs are usually in financial distress. The mere existence of a new network affiliation is unlikely to keep a station afloat. To the contrary, absent the efficiencies from local market combinations these affiliates could hurt the development and rollout of these networks.

The ramifications of this policy will be felt not only in the respective local markets, but also at the national level. During the initial rollout of a network, programming aired during non-network hours is critical. Non-network programming provides the important lead-in audience for the emerging network prime time audience. With local marketing agreements in place, these new affiliates are in a position to afford higher quality programming. This in turn helps create a viable lead-in audience for the new network. This not only benefits diversity and competition in local markets, but also fosters these objectives at the national network level.

It is worth noting that the LMAs involving the major networks, (ABC, CBS, NBC and Fox) are primarily extended coverage LMAs. In these cases, the local affiliate is unable to deliver a signal throughout its DMA market. The LMA provides over-the-air coverage to heretofore unserved areas.

D. Independents and New Networks

Apart from assisting the deployment of the WB and UPN networks, the LMAs in the larger markets appear to be enhancing diversity by giving new life to independent television stations. In the larger markets, there are already a sufficient number of stations to serve as outlets for the new networks. By harnessing local efficiencies, however, the LMAs in the largest markets create an economic environment that will help foster even newer networks such as Pax Net.

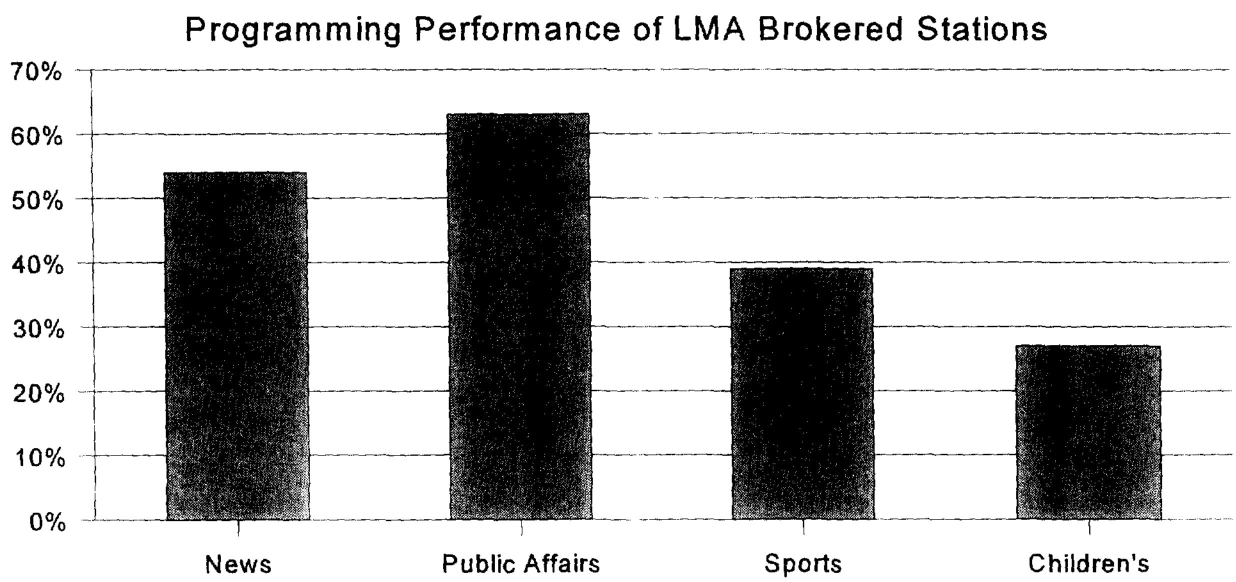
Alternatively, creating a new class of viable independent stations is clearly in the public interest. These stations serve as an important outlet for non-network programming, which helps independent producers gain access to audiences in these markets. Moreover, because of the programming flexibility, these stations are able to broadcast local sporting events without risking network preemption problems.

Local market combinations also create an economic climate to produce and broadcast local programming. For example, larger stations with news departments have produced a second local newscast or used its facilities to create new local public affairs programs. As the programming performance data presented below indicate, local marketing agreement have increased the amount of such programming.

Finally, and perhaps most importantly, the finances associated with being part of an LMA help these stations shift to a general audience program format. In many instances, these stations were running infomericals full time or were "shopping" stations. The LMA has given these stations a chance to afford quality general audience programming. In short, it has helped the station become a meaningful voice in the local market.

E. Programming Performance

In our initial report, ALTV observed that local marketing agreements result in improved service to the public. Our results confirmed Congress's observation that local marketing



agreements served the public interest. The responses to the FCC's *Public Notice* corroborate these previous conclusions. The following chart outlines the programming performance of the approximately 68 operational "brokered" stations who responded to the FCC's *Public Notice*. It analyzes the number of brokered LMA stations (as a percentage of all responding LMA stations) by program category.

News Programming: Commencing a news operations is perhaps the largest single expense for local television stations. Start-up costs for news operations can run into the tens of millions of dollars per station. As a result, it can takes years before a station has the economic base to begin a local newscast.

As the above chart indicates, approximately 54 percent of the brokered stations responding to the FCC's inquiry indicated they were broadcasting (45%) or planned to broadcast (5.7%) a news program. This is truly a remarkable achievement considering the economic condition of these stations. Many of these facilities are just a year or two from being in financial distress. In most instances, the brokered stations introduced an additional news program into the market. In other cases, the station expanded on existing news operations. Absent the local marketing agreements there is no way these stations would be in an economic position to provide an additional newscast to their communities.

In most instances, the LMAs are not simply duplicating the newscasts of the brokering station on the brokered station. For example, WNUV (Baltimore, MD) offered a new 6:30 PM newscast. WOTV (Grand Rapids, MI) broadcasts news at 6 p.m. and 11 p.m. WUAB and WOIO use separate news formats, which increases the number of news hours broadcast daily by 1.5 hours. In many cases, the brokered stations are also offering the benefits of time diversity. For example, WRAZ (Raleigh, NC), WWHO (Columbus, OH), WLWC (Providence, RI), WLYH (Harrisburg. PA), WWMB (Florence-Myrtle Beach, SC), and WFXP-TV (Erie, PA) are just a few of the stations offering a new 10 p.m. news cast. Other stations such as WJTC-TV (Mobile, AL), KFVE (Honolulu, HI) offer a 9 p.m. newscast. In some instances, e.g. WFGX (Mobile, AL), this will be the first local news specifically designed for the community. In other cases, the newscasts are geared specifically for minority groups in the community.

Public Affairs Programs: LMAs have also led to a significant increase in public affairs programs and related charitable activities. Almost every station responding to the FCC's *Public Notice* indicated an increase in charitable and community work. This is especially the case in the area of charitable telethons. For example, KASN (Little Rock, AR) and WVBT (Norfolk, VA) were key sponsors of the United Negro College Fund's Telethon. These activities usually included direct work in the community as well as PSA campaigns, telethons and consumer reports. In some cases, it took the form of free time for political candidates.

In addition, over 60 percent of the responding operational stations indicated they have increased their public affairs programs. In many cases, these half-hour shows focus on a particular minority group in the community. In other cases, the public affairs program focuses on the needs of a specific community. WNUV (Baltimore, MD) gears its public affairs programming specifically for the minority community. KNVA (Austin, TX) provides public affairs programs for the Hispanic community. Other stations, such as WBNE (Hartford, CT) have provided free political time to candidates. KQCA (Sacramento, CA) produces *Focus*, a weekly public affairs program which addresses the needs of that community. In the Tyler, Texas market, KLSB-TV broadcasts a public affairs program designed to address issues in Nacogdoches. This community had no specific programming directed toward it prior to the LMA. Brokered station WACY is the only television station serving Appleton, Wisconsin. Similarly, in Mississippi WLOV broadcasts a public affairs specifically directed at the West Point community.

Sports: Several years ago the Commission examined the issue of sports migrating from free, over-the-air television to pay subscription services. While the FCC expressed some concern about the potential for preclusive contracts in college football, it declined to adopt specific anti-siphoning rules. Today, not only are sports leaving free, over-the-air television at an increasing rate, but even the cable industry is beginning to decry ever-increasing costs of securing sporting events for television. A recent story in *Broadcasting and Cable* magazine points out that, at least with respect to local baseball broadcasts, games are moving from free television towards pay cable services. Indeed, one of the major issues in the cable rate debate is the increased cable fees associated with passing on the costs of sports rights.

While many focus on the high costs of national rights, the costs of securing local broadcasting rights to major league baseball, NBA basketball, NHL hockey, college football and college basketball are escalating as well. The battle for local sports rights usually pits a regional sports subscription (or basic) channel against local television stations. Unfortunately, the local stations with the economic resources to bid for these rights have commitments with the major television networks. As a result, they do not have the "shelf space" to broadcast many of these local games. Alternatively, smaller television stations have the shelf space, but lack the financial resources to compete against the regional sports cable networks. As a result, regional cable sports channels continue to acquire local sports rights and pass these costs on to cable consumers.

One way to keep sports related subscriber fees down is to create an economic environment where sporting events can be financed and broadcast on free, over-the-air television. One approach, previously rejected by the Commission, would be to adopt some form of anti-siphoning rule. The more appealing alternative is to permit the broadcast industry to harness the economic efficiencies of the free, over-the-air system.

This is precisely what LMAs have achieved. As the chart presented above indicates, almost 40% of the brokered stations responding to the FCC's *Public Notice* reported broadcasting local sporting events. For example, KXTX (Dallas, TX) was able to broadcast more than 90 Texas Rangers games. In Sacramento, KQCA broadcast the San Francisco Giants and Oakland Athletics. With the help of the LMA, WPTT in Pittsburgh was able to air both the Pirates and the NHL's Penguins. KCWB broadcast the Kansas City Royals. WWHO (Columbus, OH) was able to present the NBA's Cleveland Cavaliers.

The benefits are not limited to professional sports. WABM (Birmingham, AL) was able to broadcast the University of Alabama games. WLWC (Providence, RI) was able to get the rights to Big East football and basketball. WLMT (Memphis, TN) aired the University of Memphis games. KTTU (Tucson, AZ) broadcast University of Arizona football.

Broadcasting sporting events is a major accomplishment. It runs counter to the overall trend which sees local sports programming leaving free, over-the-air television. LMAs permit large network affiliated stations with the financial resources to bid for local sports rights. These stations will broadcast several of these games on their stations. The vast majority of the games, however, will be broadcast on the brokered station, which has more flexibility in its scheduling. There is absolutely no way the brokered stations would be able to afford these sports rights absent the LMA arrangement.

F. Technical Improvements

Approximately 40% of the responding LMAs indicated that the brokering station had invested heavily in new technical equipment for the brokered station. This directly addresses the FCC's diversity concerns. In its desire to promote additional voices in a market, the new voice must have the technical ability to be received. In many cases, however, the brokered stations lacked the financial resources as well as the technical ability to be heard in the market.

There are numerous examples of stations providing significant technical help to the brokered station. KXAS had its facilities significantly upgraded, expanding its overall reach by 8.6%. WWHO's (Colombus, OH) technical facilities were in disrepair and off the air on a weekly basis. The LMA helped rebuild the stations technical facilities. WFVT (Charlotte, NC) was able to go on the air because of its ability to share a tower with WJZY. WOTV (Grand Rapids, MI) was able to improve its newsroom facilities and get a new ENG truck. WVBT (Norfolk, VA) increased its transmitter power. WLYH (Harrisburg, PA) received a $1.5 million technical overhaul. KLRT (Little Rock, AR) invested over $400 thousand in new equipment for KASN. WFXP in (Erie, PA) received over $750 thousand in new equipment due to its LMA with WICU. These are just a few of the examples of the improved service which has resulted from technical improvements directly related to LMA arrangements in local markets.

The technical improvements in physical plant and equipment are critically important as these stations attempt to transition from analog to digital television service. In most instances, the brokered stations lack the financial resources to make the transition. Entering into a local marketing agreement can help as station afford the shift to digital. At the very least it will expedite the transition.

G. Minority Ownership

Throughout the years the FCC has championed minority ownership in broadcasting. According to recent statements by several Commissioners, these concerns still exist today. It is interesting to note, therefore that a significant number of the brokered stations responding to the FCC's *Public Notice* are minority owned.

For example, Glencairn Ltd. is a minority owned company with seven television stations; WABM (Birmingham, AL), WNUV (Baltimore, MD), WVTV (Milwaukee, WI), WPGH Pittsburgh, PA), KRRT (San Antonio, TX) and WFBC (Ashville, NC). In fact, Glencairn has the largest portfolio of minority owned television stations in the country. The most important element to grasp is that the local marketing agreement gave Glencairn the financial stability to improve its overall programming service. Absent the local marketing agreement, it is uncertain whether Glencairn would have the financial backing to operate these facilities. In many respects, the local marketing agreement has worked as an incubator for the development of minority owned stations.

This is not the only example of a local marketing agreement facilitating minority ownership. In Billings, Montana, the local marketing agreement made it possible for KHMT-TV (Ch. 4) to be owned and operated by perhaps the only 100% Native American full powered TV licensee in the nation. Similarly, the arrangements between KAME, KRXI (Reno, NV) and KTVU (San Francisco, CA) led to the construction of KRXI-TV, which is licensed to Nevada Television Corporation, a minority controlled company. Local marketing agreements have also helped minority owned stations in Atlanta (WNCM), Cleveland (WOAC), West Palm (WVTX), and Orlando (WZWY) get on the air. There can be no doubt that these arrangements have helped increase diversity of ownership.

H. Employment

There is no doubt that local market combinations are able to harness the efficiencies of combined operations. Greater efficiencies, however, do not translate into fewer employment opportunities in broadcasting. To the contrary, creating more competitive stations actually enhances job opportunities. For example, when WOIO and WUAB in Cleveland entered into a local marketing agreement, news programming on WOIO and WUAB expanded. The competitive posture of WUAB also improved. This LMA created over 51 new jobs. This is not an isolated example. In Syracuse, the local marketing agreement improved the economic conditions at WNYS and WSYT, creating over 20 new jobs. The local marketing agreement between WZVN and WBBH in the Ft. Myers -Naples, Florida market increased employment from 138 to 190 -- a 38 percent increase. In the Tyler, Texas market (No. 108), the LMA between KETK and KLSB saved 16 jobs in a small market. Jobs were also saved in the Mobile-Pensacola market with the LMA between WPMI and WJTC. Similarly, the LMA between KRXI and KAME (Reno, NV) increased employment. The LMA between KSBF and WDKA in the Paducah market (No. 79) created a dozen new jobs. Employment opportunities increased in Raleigh, NC with the local marketing agreement between WRAL and WRAZ. As these examples point out, creating more competitive local television stations will help employment in local television markets. This is especially true in those cases where the local combination has led to the construction of a new broadcast facility.

I. Lost Investment: Forced Divestiture

The cases studies presented below detail an investment of billions of dollars in local marketing agreements. This investment includes technical support, equipment, towers, transmitters, studios, real estate, buildings, staffing and of course programming. As the FCC knows, programming costs have skyrocketed and station must purchase programs several years in advance of their actual broadcast. This is especially true with respect to off-network programs.

As Congress observed in 1996, local marketing agreements have served the public interest. In monetary terms, the billions invested through local marketing agreements has revitalized stations in markets across the nation. It has added free, over-the-air television voices, improved programming service and provided more choices to American consumers.

The FCC must consider the consequences of forcing the termination of these arrangements. It is likely that the benefits outlined below will be lost. Most, if not all of the brokered stations, were marginal operations prior to entering into the local marketing agreement. There is little or no evidence to demonstrate that these stations will continue their present level of performance in the absence of the local marketing agreement. On the contrary, it is likely that these facilities will revert back to their marginal status. Such a result would be devastating to consumers in these markets and contrary to the public interest.

Finally, in many cases the FCC has approved the licenses and/transfers involving these facilities. It most certainly has not prohibited these arrangements. It would therefore be unconscionable for the FCC to now force these stations to terminate these local marketing agreements. Moreover, it sends precisely the wrong signal to companies that plan to make future investments in broadcast television.

III. LMA PUBLIC INTEREST BENEFITS: CASE STUDIES

The following summarizes the public interest showings of the local marketing arrangements that responded to the FCC's survey. Time brokerage arrangements not involving two *local* stations were not included. Also, LMAs used simply as a short term mechanism during the assignment and transfer process have not been reported.

As noted in previous comments, local marketing arrangements provide valuable insight into the potential for local market combinations. In every instance, service to the community has improved. This is significant evidence that not only justifies the need for permanently grandfathering these combinations, but also for relaxing the duopoly rule.

The local marketing agreements listed below have been arranged by market size with the largest markets listed first. The brokering station is listed first in each entry. The brokered station appears in *italics*.

Dallas, Fort-Worth, TX
DMA Market No. 8

KXAS-TV, Ch. 5 (NBC)
KXTX-TV, Ch. 39 (Ind)

Apart from helping financially troubled stations and expanding local programming, LMAs can better position the broadcast industry as a whole to compete with cable, DBS and other multichannel video programmers. In no market is this more apparent than Dallas-Ft. Worth, Texas (the 8th ranked DMA), where the turnaround of a failing independent station - made possible through an LMA -- has contributed to growth in the local broadcast market and one of the lowest cable penetration rates in the country.

The Dallas-Ft. Worth market has twelve full-power commercial television stations, and is one of the most highly served and competitive broadcast television markets in the country. Operated as an independent station by the for-profit subsidiary of a nonprofit entity, KXTX-TV was caught in a vicious spiral of rising programming costs and declining advertising revenues. By 1994, KXTX's debt had made it impossible for the station to provide the level of local service it desired. Financial reality forced KXTX to limit its local news effort to three or four one-minute breaks each weekday.

Faced with bleak financial prospects, KXTX-TV entered into an LMA with KXAS-TV which assisted KXTX in its recovery by negotiating restructured programming agreements and significantly upgrading the station's technical and programming facilities. Specifically, KXTX's studio and office facilities have been completely refurbished and its signal strength increased by 8.6%.

In addition to the efficiencies and public interest benefits set forth below, KXTX has expanded local news with time-shifted rebroadcasts of KXAS's daily news programs and other locally produced news specials. KXTX also has the flexibility to undertake other local program initiatives such as providing continuous prime time coverage of election results during non-presidential election years.

Moreover, the LMA operation has made it possible for both KXTX and KXAS to obtain programming neither could otherwise have obtained. In 1996, KXAS entered into a five-year agreement with the Texas Rangers granting the station all the local telecast rights, broadcast and cable, for the team's major league baseball games. KXTX carried 123 Texas Ranger games in 1996, while KXAS aired another 15--a free broadcast total unmatched in any local television market, except markets such as Chicago and Atlanta where the local broadcast stations are also cable superstations. For the next four years, a minimum of 90 games will be broadcast on free over-the-air television in the Dallas market, 15 games on KXAS and 75 on KXTX, with the 60 or so remaining local games carried on a cable regional sports network.

Without the ability to offer a significant number of high-profile games on the VHF station, KXTX could not have obtained the Rangers' rights. Alternatively, as a large market NBC affiliate with an increasingly limited ability to preempt the network, KXAS could not have obtained any local Rangers' rights without the ability to carry an excess of 100 games on KXTX. Together, the two stations put together a package which bested the competitive bid of a local regional cable sports channel and made it possible to later enter into a cable deal which assures a primary role in local sports rights for free broadcasting for at least the next several years.

As the Rangers' negotiations exemplify, strengthening weak local stations not only increases competition among broadcast stations, it clearly enhances the competitiveness of broadcasting as a medium in its competition against multichannel competitors such as cable and DBS. The presence of 138 Rangers' games on local television undoubtedly reduced the number of viewers who felt the need to subscribe to cable and/or DBS. Indeed, the Dallas-Ft. Worth market has one of the lowest cable penetration rates in the country

.

The now fabled O.J. Simpson criminal trial provides an even more dramatic, albeit McLuhanesque, example of the increasingly inter-modal nature of competition in the local television marketplace. In most markets in the country, live coverage of the O.J. trial was limited to cable for the simple reason that there were not enough local television stations without network or syndicated programming commitments to provide outlets. And O.J. viewing was credited with an astounding 45% of cable television's ratings growth.

But in Dallas, the O.J. trial was live over-the-air on KXTX, with local legal commentary, bringing the station some of its highest ratings and, in the process, helping to maintain Dallas, at 50 percent cable penetration, as one of the lowest cable penetrated large markets in the country. And every other broadcast station in the Dallas market benefitted and continues to benefit from KXTX's increasingly powerful programming lineup - for broadcasters lose roughly half the total day viewing for every household which hooks up to cable or DBS.

In addition, in May of 1995 it was illustrated how an LMA can provide continuity to the public when one of the stations has an interruption in service. KXAS's transmission temporarily ceased during a severe hailstorm and weather emergency. Anticipating the interruption, viewers were directed to tune to KXTX for a simulcast of the emergency coverage. Similarly, KXTX's tower collapsed in October 1996 while a work crew was attempting to increase its height. The station resumed service within 48 hours because it could relocate to KXAS's nearby tower.

KDFW-TV, Ch. 4 (Fox)
KDFI -TV, Ch. 27 (Ind)

KDFI-TV operates on Channel 27, while KDFW-TV operates on Channel 4. Both stations are in the Dallas-Fort Worth Designated Market Area, which is the eighth largest LMA. KDFW-TV is affiliated with the Fox Broadcasting Company. KDFW-TV does not broadcast the-programming of Fox Children's Network ("FCN"), which will be broadcast by KDFI as of September 1997. Except for FCN programming, KDFI-TV is not affiliated with any national network.

KDFI was constructed and on the air prior to the TBA; however, the station was in bankruptcy for two years prior to the TBA. Thus, the TBA has maintained on-air an independent station serving the Dallas/Fort Worth market that otherwise would not have been able to remain operational for financial reasons.

Atlanta, GA
DMA Market No. 10

WTLK-TV Ch. 14 (Ind./Pax)
WNGM-TV, Ch. 34 (Ind)

The Time Brokerage Agreement was entered into together with a loan agreement by which Paxson Communications provided the funding for Whitehead Media of Georgia, Inc. to acquire WNGM-TV, (Athens, Georgia.) The combination of the funding and LMA permitted Whitehead Media of Georgia, Inc., a company wholly-owned by an African-American, to acquire this television station.

The TBA has permitted both stations to streamline and economize their operations. Prior to the TBA, the stations had separate facilities and offices. The stations have since collocated the majority of their facilities, making themselves accessible to the residents of each station's community of license. The collocation has also allowed the stations to save on rent, utility and maintenance costs and to upgrade technical equipment in facilities as necessary. Administrative functions also have been combined to a certain extent, resulting in efficiencies in the areas of sales and traffic coordination. The cost savings the stations have realized have translated into enhanced public affairs, news, and entertainment programming.

In summary, under the TBA, these stations have been able to expand their public service efforts and achieve economies of scale that have resulted in a more efficient operation.

Seattle, WA
DMA Market No. 12

KING-TV, Ch. 5 (NBC)
KONG-TV, Ch 16 (Ind)

The LMA has enabled the brokered station, KONG-TV, to emerge as a new voice in the local broadcast market. KONG-TV was constructed while under the LMA and commenced programming at 4:00 a.m. (PST) on Monday, July 7, 1997. The LMA has provided KONG-TV with much needed capital support, produced operational economies and allowed KONG-TV access to KING-TV's experienced management and staff, all of which enabled KONG-TV to begin broadcasting programming on a 24-hour-per-day basis. KONG-TV now airs local and public service programming, including several hours of locally produced daily news programming and locally produced public service announcements. KONG-TV also has plans in place to provide additional children's television programming beginning in the fall of 1997, and hopes to acquire the rights to broadcast local professional or college sporting events.

Cleveland, OH
DMA Market No. 13

WOIO-TV Ch. 19 (CBS)
WUAB-TV Ch 43 (UPN)

Malrite Communications Group, Inc. ("Malrite"), licensee of station WOIO-TV at Shaker Heights, Ohio, has a time brokerage agreement with Cannell Cleveland, L.P. ("Cannell"), licensee of station WUAB-TV at Lorain, Ohio. Both stations operate in the Cleveland, Ohio DMA. WOIO-TV is the broker station under the time brokerage agreement.

The time brokerage agreement has brought a number of significant advantages to the communities of license, the service areas of the two television stations, and to the city of